

In the Matter of Merchant Mariner's Document No. Z-571605 and all other Seaman Documents
Issued to: ROY A. RODRIGUEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1031

ROY A. RODRIGUEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 October 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. Three specifications allege that while serving as second cook and banker on board the American SS BARRE VICTORY under authority of the document above described, on or about 4 September 1957, Appellant assaulted the Chief Steward with a dangerous weapon, a razor; Appellant later used his fist with which to assault and batter the same crew member; Appellant failed to perform his duties. A fourth specification, simply alleging assault and intended to refer to the middle specification above, was found proved by the Examiner but it is duplicative and should have been dismissed by the Examiner. Therefore, it is now dismissed without further consideration.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and each of the above three specifications, except the one alleging assault and battery with his fist to which he entered a plea of guilty.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Chief Steward and two other eyewitnesses to the incident involving the alleged assault with a razor.

In defense, Appellant offered in evidence his testimony. He stated that he pulled out a razor to scare the Chief Steward away from Appellant but that he did not open the razor or chase the Steward with it.

At the conclusion of the hearing, both parties were given an opportunity to submit argument and proposed findings and conclusions. The Examiner concluded that the charge and specifications had been proved. An order was entered revoking all

documents issued to Appellant.

The decision was mailed on 16 October 1957. Appeal was timely filed on 15 November 1957.

FINDINGS OF FACT

On 4 September 1957, Appellant was serving as second cook and baker on board the American SS BARRE VICTORY and acting under authority of his Merchant Mariner's Document No. Z-571605 while the ship was in the port of Leghorn, Italy.

At approximately 1600 on this date, the Chief Steward went into the galley and found that Appellant was neither present nor had he prepared the proper food for the evening meal. An hour later, the Chief Steward returned to the galley. Appellant was in an intoxicated condition. The Steward berated Appellant and departed. At 1730, the Steward was in the passageway near the galley when Appellant pulled out a razor, opened it and chased the Steward down the passageway. Appellant swung at the Chief Steward with the razor but did not make contact with his body. The Steward ran to his room. The Chief Mate took the razor away from Appellant.

Later on the same evening, the Chief Steward was ashore sitting in a shop when Appellant came up behind the Steward and struck him a blow on the side of the head with Appellant fist. Other members of the crew took Appellant back to the ship.

Appellant's prior record consists of a probationary suspension in 1954 for assault and battery. Appellant has been going to sea since 1945.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order of revocation is unusually harsh in view of the fact that the Chief Steward was not injured; a rehearing should be granted or additional evidence heard because Appellant has no legal training and therefore was unable to defend himself properly.

Appearance on Appeal: W. Jiles Roberts, Esquires, of Houston, Texas, of Counsel

OPINION

The record indicates that Appellant's rights were fully protected at the hearing despite the fact that he elected to appear without counsel. Appellant was fully informed of his right to present witnesses in his defense. Nevertheless, the only witnesses who testified, other than Appellant, stated that Appellant failed to perform his duties and chased the Chief Steward with an open razor. The Examiner rejected Appellant's unsupported testimony to the contrary. Appellant admitted by his plea of guilty and his testimony that he struck the Chief Steward while they were ashore later in the evening. Under these circumstances, it is my opinion that it would serve no useful purpose to grant

a new hearing or to reopen this hearing to receive additional evidence from some unspecified source.

Considering the circumstances of the assault with the razor, which undoubtedly was used as a dangerous weapon, and Appellant's prior record of a similar offense, the order of revocation does not appear to be excessive.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 16 October 1957, is ~~REVERSED~~ **AFFIRMED**.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 23rd day of April, 1958.